GAUTREAUX v. PUBLIC HOUSING AUTHORITY: EQUAL PROTECTION AND PUBLIC HOUSING

The recent decision of *Gautreaux v. Chicago Housing Authority*[1] took a step that went both too far and not far enough in the developing area of judicial intervention in the administration of public housing programs. In that case, plaintiffs, Negro tenants in and applicants for public housing in Chicago, brought suit against the Chicago Housing Authority (CHA) claiming that defendants had deprived them of rights guaranteed by the fourteenth amendment. The first count of the complaint alleged that defendants had intentionally selected sites and assigned tenants to public housing units in a manner that maintained "existing patterns of urban residential segregation by race" in Chicago, thus violating plaintiffs' right to the equal protection of the laws. Count three was identical to the first count except that it omitted any allegation of intent on the part of the CHA.[2] Both counts sought declaratory and injunctive relief. The second and fourth counts repeated the allegations of counts one and three, and prayed for relief pursuant to section 601, title VI of the Civil Rights Act of 1964.[3]

CHA moved to dismiss for failure to state a claim upon which relief could be granted. The court rejected CHA's contention that all four counts should be dismissed on the grounds that plaintiffs lacked standing and that the class action was improper;[4] however, it did accept defendant's contention that counts three and four should be rejected because of plaintiffs' failure to allege intent.[5]

After presenting evidence on the remaining two counts, both parties moved for a summary judgment.[6] Plaintiffs' motion was granted on the first count of the complaint.[7] The plaintiffs' motion for summary judgment on the second count, which sought an injunction against the use of federal funds by CHA,[8] was denied. Although it had already held that the count did state a cause of action, the court foresaw that relief of this nature would impede the construction of any public housing, thus putting the plaintiffs in a worse position than if they had lost the suit altogether.[9]

The court postponed relief to allow the parties an opportunity to formulate a plan which would prohibit the future exclusive location of public housing in predominantly nonwhite areas. Approximately five

[1] 296 F. Supp. 907 (N.D. Ill. 1969).
[2] Gautreaux v. Chicago Housing Authority, 265 F. Supp. 582, 583 (N.D. Ill. 1967).
[3] 42 U.S.C. § 2000d (1964).
[4] 265 F. Supp. at 583.
[5] *Id.* at 584.
[6] 296 F. Supp. at 909.
[7] *Id.* at 914.
[8] *Id.* at 914-15.
[9] *Id.* at 915.

months later, the court entered an order on the summary judgment.[10] The order divided Cook County into two areas. The first area was labelled the Limited Public Housing Area and was defined by the court as "that part of [Cook County] which lies either within census tracts . . . having 30% or more non-white population, or within a distance of one mile from any point on the outer perimeter of any such census tract." [11] The second area was labelled the General Public Housing Area and was defined by the court as the rest of Cook County.[12] The order prohibited CHA from constructing any dwelling units [13] within the Limited Public Housing Area until it has commenced construction of seven hundred dwelling units in the General Public Housing Area.[14] Moreover, once this condition is satisfied, the court has required that for every unit CHA constructs in the Limited Public Housing Area, it must build three units in the General Public Housing Area.[15] The same three-to-one ratio was applied to those units which the CHA leases, rather than builds.[16]

In order to insure against a large concentration of public housing in any one location, the judgment order directs that each public housing structure be planned for occupancy by not more than 120 persons. Where observing this requirement limits CHA's capacity to supply dwellings, or "if it will assist in achieving the purposes of this judgment order," the maximum may be raised to 240 persons.[17] Furthermore, the number of CHA low income, nonelderly units is restricted to fifteen per cent of all dwelling units within a given census tract.[18] Finally, the order requires that CHA not provide housing above the third story to any family with children.[19]

In addition to these specific requirements, the judgment order provides generally that:

> CHA shall use its best efforts to increase the supply of Dwelling Units as rapidly as possible in conformity with the provisions of this judgment order and shall take all steps necessary to that end, including making applications for allocations

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[10] Gautreaux v. Chicago Housing Authority, Civil No. 66 C 1459 (N.D. Ill., July 1, 1969).

[11] *Id.* at 2.

[12] *Id.*

[13] "Dwelling Unit" is defined as an apartment or single family residence occupied by a low-income, nonelderly family and furnished by or through CHA. *Id.* at 2.

[14] *Id.* at 4.

[15] *Id.* The order as formulated requires 75% of new construction subsequent to the construction of the first 700 units to be in the General Public Housing Area. For purposes of clarity, this will be referred to as the three-to-one ratio requirement.

[16] *Id.* at 4-5. The order refers to these units as "Leased Dwelling Units." A Leased Dwelling Unit is defined as "a Dwelling Unit in a structure leased or partially leased by CHA from any person, firm or corporation." *Id.* at 2. These will normally be preexisting units which CHA has obtained.

[17] *Id.* at 5-6.

[18] *Id.* at 6.

[19] *Id.* There is, however, a minor exception not relevant here.

> of federal funds and carrying out all necessary planning and development . . . .[20]

The court also prescribed new tenant assignment procedures in order to curb prior discriminatory practices.[21]

This Comment demonstrates that the *Gautreaux* cases combine an overly restrictive approach to the equal protection clause with an overly ambitious judgment order. By requiring plaintiffs to prove that the CHA intentionally selected the great percentage of their sites within the areas heavily populated by nonwhites, the court ignored recent developments which have tended to favor a less restrictive view of equal protection in similar circumstances. On the other hand, the relief was far too broad; although plaintiffs' grievances were remedied, it is submitted that parts of the relief exceeded that which was necessary to alleviate the injustice plaintiffs were seeking to correct.

I. The Standard of Review

In determining whether governmental action violates equal protection, courts have traditionally used two basic standards of review.[22] Under the most commonly applied standard, courts have held that state action is presumptively valid unless it can be demonstrated that there was an intent to discriminate,[23] or that the action bears no rational relationship to the accomplishment of a permissible public purpose. This test has primarily been used when the governmental classification is essentially "economic." [24]

In cases where the state action is particularly suspect because a group has been singled out on the basis of race or some other "suspect trait," [25] or where a fundamental right is involved,[26] an "overriding justification" standard has been used. One commentator has aptly defined the characteristics of "suspect traits" and the standard of the "overriding justification" test:

> Some types of classification must be supported by very strong justification. Racial classifications have been regarded with

[20] *Id.* at 9.

[21] *Id.* exhibit B.

[22] *See* Tussman & tenBroek, *The Equal Protection of the Laws*, 37 Calif. L. Rev. 341, 353-61 (1949); Note, *Hobson v. Hansen: Judicial Supervision of the Color-Blind School Board*, 81 Harv. L. Rev. 1511, 1512 (1968); Comment, *Relocation, Accidental Inequalities, and the Equal Protection Doctrine*, 117 U. Pa. L. Rev. 579, 583-86 (1969).

[23] *See, e.g.*, Yick Wo v. Hopkins, 118 U.S. 356 (1886).

[24] *See, e.g.*, Williamson v. Lee Optical, 348 U.S. 483 (1955); Tigner v. Texas, 310 U.S. 141 (1940); Note, *Hobson v. Hansen: Judicial Supervision of the Color-Blind School Board*, *supra* note 22, at 1512.

[25] *E.g.*, Harper v. Virginia Bd. of Elections, 383 U.S. 663, 668 (1966) (wealth considered "suspect"); Korematsu v. United States, 323 U.S. 214, 216 (1944) (race); Note, *Equal Protection and the Indigent Defendant: Griffin and Its Progeny*, 16 Stan. L. Rev. 394, 398-99 (1964).

[26] *See, e.g.*, Reynolds v. Sims, 377 U.S. 533, 565-66 (1964) (right to vote).

> suspicion by the courts, and unless the government presents compelling reasons—for example, a wartime emergency—for the imposition of inequalities on the basis of race, such classifications will be invalidated. The government has also been required to present strong justification for discriminatory classifications based on other "suspect traits" such as alienage, nationality, or economic status. In such cases the courts appear to have applied a balancing test and to have struck down classifications which failed to produce societal benefits outweighing the detriments imposed on the affected class.[27]

The plaintiffs in *Gautreaux* were not adversely affected by the court's holding that they must prove discriminatory intent, since they were fortunate enough to be able to do so. But since discriminatory intent is hard to prove in most cases, the rule places a severe limitation on availability of the equal protection clause in fields such as public housing. The "suspect traits" doctrine generally provides no help, because there is no explicit classification by race. Furthermore, it is hard to argue that this type of case involves a "fundamental right." All that can readily be demonstrated is that the operation of this government program in the context of preexisting social conditions produces a result which is unequal in fact, leaving identifiable disadvantaged groups worse off than the rest of society. The problem in bringing such a situation within the scope of the equal protection clause is that the state action which produces this type of inequality is often incontestably "rational," as that word is used in traditional equal protection doctrine. The programs are usually good faith, reasonable attempts to cure social problems. Furthermore, the inequality they produce is not "intended" in any sense except that it is foreseeable and that special efforts can be made to alleviate it. The *Gautreaux* court's holding that "intent" must be proved leaves this type of inequality in government programs constitutionally unassailable.

This holding is at odds with other recent decisions which have recognized the constitutional rights of disadvantaged minorities inadequately provided for by seemingly impartial government programs. In *Hobson v. Hansen*,[28] the District Court for the District of Columbia examined the District school board's "neighborhood school" policy and the practice of administering ability-grouping tests within the school system. The court, in an extraordinarily lengthy opinion, held that even though there were no suspicious traits inherent in the policies, and even though there was positive justification for such policies, their effect was severely detrimental to a disadvantaged minority.

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[27] Note, *Hobson v. Hansen: Judicial Supervision of the Color-Blind School Board*, *supra* note 22, at 1511-12.

[28] 269 F. Supp. 401 (D.D.C. 1967) (opinion by Skelley Wright, J.), *aff'd sub nom.* Smuck v. Hobson, 408 F.2d 175 (D.C. Cir. 1969).

> [G]overnmental action which without justification [29] imposes unequal burdens or awards unequal benefits is unconstitutional. The complaint that analytically no violation of equal protection vests unless the inequalities stem from a deliberately discriminatory plan is simply false.[30]

The court held that the "neighborhood school" policy was responsible for the de facto school segregation which was prevalent in the district,[31] and that the ability-grouping test was relegating Negro students to blue collar employment at the very early stages of grammar school.[32] The court ordered measures that would diminish de facto segregation,[33] and compensatory programs that would counteract the harmful effects of segregation in cases where it was not possible to eliminate it entirely.[34]

In *Norwalk CORE v. Norwalk Redevelopment Agency*,[35] the Second Circuit applied the rationale of the *Hobson* court to the housing area. Plaintiffs in that case argued, *inter alia*, that the Norwalk Redevelopment Agency's administration of the relocation program was effectively driving nonwhites from the city of Norwalk.[36] Again, there was no "suspect trait" inherent in the statute or in its administration and there was difficulty in proving that the agency was intending the adverse effects which nonwhite displacees were experiencing. In fact, the lower court had sustained the contention that any detrimental effects were not the result of being compelled to leave condemned sites, but due rather to the fact that there was an extremely tight and highly discriminatory housing market, which was in no way the fault of the authority.[37] The Second Circuit held, however, that even though this detrimental effect was "accidental," rather than intentional, the planners

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[29] The opinion later makes clear that where "adventitious" inequality harms disadvantaged minorities, the test of validating justification is a heavy one, and not the "rational basis" test used in judging other types of classifications. *Id.* at 506-07.

[30] *Id.* at 497.

[31] In 11 of 17 schools in predominantly white areas, 85 to 100% of the respective student bodies were white. In the rest of the district, 139 of 156 schools were at least 85% Negro. The district school system was 90.2% black. *Id.* at 410-12.

[32] The ability grouping tests were nationally standardized examinations designed to distinguish students of differing aptitudes. Grouping students on the basis of their performance on these tests was supposed to avoid the problem of a unitary curriculum which bores bright children and discourages the less bright. Experts testified that the tests used language unfamiliar to lower class black children. Thus black children were more likely to do poorly, and as a result be relegated to an inferior educational program geared to preparing them for only menial jobs. *Id.* at 511-15.

[33] Measures suggested by the court included educational parks, school pairing, and possible cooperative programs with neighboring suburban school districts. Pending implementation of such measures, the school district was required to bus black children into white schools. *Id.* at 515.

[34] The court stated that those children for whom it was, for practical reasons, impossible to provide integrated education, should at least be given equal opportunity. The detriment inherent in their education should be eliminated by affording those children special attention. *Id.*

[35] 395 F.2d 920 (2d Cir. 1968); *see* Comment, *Relocation, Accidental Inequalities, and the Equal Protection Doctrine, supra* note 22.

[36] 395 F.2d at 924.

[37] *See id.* at 930.

should have foreseen such harsh effects.[38] Therefore, they had an affirmative duty to insure that adequate housing was available to nonwhite displacees.[39]

The holdings of the two cases are not identical. *Hobson*'s formulation is that a very heavy burden of justification must be sustained in order to validate unequal educational opportunities for disadvantaged minorities.[40] *Norwalk CORE*'s statement is that the state must take special measures to avoid inequality which will foreseeably result from the operation of its programs in the context of given social conditions. But the difference is more apparent than real. To say that the state must go to great lengths in finding alternatives to producing inequality is essentially the same as saying that it must bear a heavy burden of justifying the inequality. The crucial point is that both opinions shifted attention from the motives of the state agent to the results produced, at least where important needs of disadvantaged minorities are concerned. In both cases, the governmental action did not, on its face, present any suspect traits. However, groups whose explicit classification the courts have normally considered "suspect" were being adversely affected in important respects, such as education and housing, by the administration of programs which did not directly or explicitly so classify them. The injury to the disadvantaged minorities was recognized to be so severe that the result was as harmful as if it had been intended.

The fact pattern within the *Gautreaux* case fits within the reach of this expansive equal protection doctrine developed in *Hobson* and *Norwalk*. Plaintiffs alleged that the administration of the Illinois public housing statute was "maintaining existing patterns of urban residential segregation by race . . . ." [41] The problem had become so severe that "99½% of CHA family units are located in areas which are or soon will be substantially all Negro." [42] This type of adverse effect upon a disadvantaged group is a violation of equal protection as developed in *Hobson* and *Norwalk*, whether or not it was the purpose of CHA to achieve it.

By rejecting this expansive doctrine of equal protection, the *Gautreaux* court places a tremendous burden on future plaintiffs with similar grievances. The plaintiffs were able to overcome it in *Gautreaux*,

[38] It is unclear whether *Norwalk CORE* should be read as totally dispensing with the need to allege "intent" to deprive the plaintiff of the equal protection of the laws. The plaintiffs did make such an allegation. *Id.* at 925. And the Second Circuit held that on the facts alleged, the allegation of intent would be sustained. *Id.* at 930-31. In the light of other language in the opinion, it seems that what the court meant was that intent was fairly alleged if it was shown that the agency implemented its plan with knowledge of the circumstances, such as discrimination in the private housing market, in the context of which the plan produced unequal results. *Id.* at 924, 931. The court clearly rejected any requirement of proof of a desire or purpose to produce adversely unequal results.

[39] *Id.* at 931-32.

[40] *See* Note, *Judicial Supervision of the Color-Blind School Board*, *supra* note 22, at 1512-13.

[41] 265 F. Supp. at 583.

[42] 296 F. Supp. at 910.

but the circumstances of the case were exceptional and unlikely to be repeated.

The Illinois statute requires that the Chicago City Council approve sites selected by CHA.[43] Recognizing City Council's ultimate power over the site selection process, CHA developed the practice of informally submitting sites for family housing to the City Council Alderman in whose ward the site was located. Sites in white areas were almost invariably vetoed by the respective aldermen and therefore not submitted for City Council approval, because the waiting lists for public housing were ninety per cent Negro.[44] Apparently motivated by their desire not to engage in practices which would promote segregation, CHA members readily admitted to the court that deliberate segregation by race was an inherent and undisguised component of their system of selecting public housing sites.

Factual situations in which the public housing authority expresses "commendable frankness" [45] are likely to be the exception rather than the rule. Furthermore, few situations are likely to present indicia of purposeful discrimination as clear as those in the *Gautreaux* case. If *Gautreaux*'s holding on the intent requirement is followed, it will impose on future plaintiffs the burden, which in practice will usually be very difficult to sustain, of showing that the facts supported the inference that the housing agency intended to maintain segregation.

II. The Relief

Although rejecting a progressive stance on the equal protection doctrine, the court acted boldly in tailoring relief. It went beyond insuring that public housing would not be located exclusively in the ghetto areas of Chicago; it also attempted to insure that public housing would never be concentrated in one location. The latter portion of the relief, while sociologically and aesthetically beneficial, went beyond what was needed to satisfy plaintiffs' equal protection claim.

A. *A Quota System to End Segregation: The Three-to-One Ratio Requirement*

The requirement that the location of housing units conform to a quota system based on the racial mixture of neighborhoods is unprecedented. Strong support for this measure, however, comes, by way of analogy, from other areas where there has been a violation of equal protection, specifically school desegregation cases.

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[43] Ill. Ann. Stat., ch. 67½, § 9 (Smith-Hurd Supp. 1969).

[44] 296 F. Supp. at 912-13.

[45] *Id.* at 912.

It has been suggested that *Brown v. Board of Education*,[46] which holds that state-created racial segregation in public schools is unconstitutional, requires the elimination of even benign classifications that attempt to compensate for past injuries.[47] However, courts have upheld state legislation and school board policies which have incorporated racial classifications in order to eliminate racial imbalance.[48]

In addition, the United States Supreme Court has held in *Green v. County School Board* [49] that a state must take affirmative steps to eliminate the effects of de jure school segregation. Holding invalid "freedom of choice" plans which sought to satisfy the equal protection requirement, the Court declared that school boards were charged with an "affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." [50] The *Hobson* court had already gone farther than *Green* by requiring a school district to take affirmative steps to eliminate that segregation which had not been deliberate but was merely de facto.[51] *Norwalk* extended the logic of *Hobson* to housing by suggesting that the Norwalk Redevelopment Agency would have to take affirmative steps to insure that nonwhite displacees would be satisfactorily relocated.[52] The *Gautreaux* court thus had ample precedent to impose an affirmative duty upon CHA to remedy the effects of its past policies.

There is one further problem with the affirmative action called for by the court order. The steps required by the court were quite specific. There is some evidence in the desegregation cases [53] that courts ordering specific actions on the part of a school board must allow for some flexibility to compensate for administrative difficulties. In *United States v. Montgomery County Board of Education*,[54] the Supreme Court upheld a district court order requiring schools to have at least one nonwhite teacher for every five whites. On the basis of the district court's

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[46] 347 U.S. 483 (1954).

[47] *See* Goldman, *Benign Racial Classifications: A Constitutional Dilemma*, 35 U. CIN. L. REV. 349 (1966). *Compare* Fiss, *Racial Imbalance in the Public Schools: The Constitutional Concepts*, 78 HARV. L. REV. 564, 588-98 (1965), *with* Kaplan, *Segregation Litigation and the Schools—Part II: The General Northern Problem*, 58 NW. U. L. REV. 157, 171-73 (1963).

[48] *See, e.g.*, Tometz v. Board of Educ., 39 Ill. 2d 593, 237 N.E.2d 498 (1968) (The Constitution permits state action aimed at reducing and eventually eliminating de facto school segregation).

[49] 391 U.S. 430 (1968). On the same day, the Court applied the same holding in two other cases. *See* Raney v. Board of Educ., 391 U.S. 443 (1968); Monroe v. Board of Comm'rs, 391 U.S. 450 (1968). *See generally* Wright, *Public School Desegregation: Legal Remedies for De Facto Segregation*, 40 N.Y.U. L. REV. 285, 298-306 (1965).

[50] 391 U.S. at 437-38.

[51] *See* text accompanying notes 29-34 *supra*.

[52] 395 F.2d at 931-32.

[53] *See, e.g.*, Board of Educ. v. Dowell, 375 F.2d 158 (10th Cir.), *cert. denied*, 387 U.S. 931 (1967); Kier v. School Bd., 249 F. Supp. 239 (W.D. Va. 1966).

[54] 395 U.S. 225 (1969).

actions in developing the order, the Court inferred that the ratio would be applied flexibly:

> [T]he Court of Appeals made many arguments against rigid or inflexible orders in this kind of case. These arguments might possibly be more troublesome if we read the District Court's order as being absolutely rigid and inflexible, as did the Court of Appeals. But after a careful consideration of the whole record we cannot believe that Judge Johnson had any such intention. . . . On at least one occasion Judge Johnson, on his own motion, amended his outstanding order because a less stringent order for another district had been approved by the Court of Appeals. This was done in order not to inflict any possible injustice on the Montgomery school system.[55]

Implicit in this opinion is the idea that an order not presenting evidence of a court's intention of flexible application would present great difficulties.

The *Gautreaux* order contains enough built-in flexibility to remove any doubt about the court's intention:

> This Court retains jurisdiction of this matter for all purposes, including enforcement and the issuance, upon proper notice and motion, of orders modifying or supplementing the terms of this order upon the presentation of relevant information with respect to proposed developments designed by CHA alone or in combination with other private or public agencies to achieve results consistent with this order, material changes in conditions existing at the time of this order, or any other matter.[56]

For example, if CHA should demonstrate at a later time that implementation of the three-to-one ratio impedes the entire public housing program because of the high costs of land in suburban areas, or because public housing in these white areas proves to be undesirable to Negro applicants, the court could modify the order.

B. *Beyond the Quota: Spreading Public Housing Throughout the Community*

In addition to the quota requirement, the *Gautreaux* court ordered that no public housing be built which is designed to house more than 120 people, that no public housing be built in an area where more than fifteen per cent of the dwelling units are public housing, and that no

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[55] *Id.* at 234-35.

[56] Gautreaux v. Chicago Housing Auth., Civil No. 66 C 1459, at 10 (N.D. Ill., July 1, 1969).

public housing be provided above the third story for families with children.[57]

While the first two requirements also insure that public housing will not be located exclusively in the ghetto areas of Chicago, they are superfluous. The three-to-one ratio requirement is a direct, effective, and adequate means to the achievement of that goal. The other requirements must rest on the existence of some independent justification.

One possible justification is that they prevent the creation of a new black public housing ghetto. Certainly the impact of the *Gautreaux* decision would be weakened substantially if housing authorities comply with the order by concentrating all their public construction in a particular white area, thereby merely extending the existing black ghetto. Prohibiting vertical development means that more land than was previously required is needed to build the same number of units. Since the acquisition of a large tract of land in an urban area is more difficult than acquisition of a small tract, the likelihood of concentrated public housing is small. Thus, prohibiting a concentration of public housing tends to prevent the creation of concentrated black public housing in any area of Chicago.[58]

The assumption on which such an argument is based is that a very large percentage of the public housing in white areas will be inhabited by blacks. The ninety per cent black waiting lists for public housing provide support for such an assumption. Nevertheless, there is convincing evidence that a greater percentage of whites will seek public housing if most of the units are built in white areas. First, in Chicago there are twice as many whites eligible for low cost non-elderly public housing as nonwhites.[59] The small number of whites currently in public housing is a result of the undesirable location of most of the present public housing units (the primarily nonwhite areas).[60] Therefore, the reluctance of whites to enter public housing would be substantially reduced if such housing became available in more desirable locations. Second, since the housing market is becoming increasingly tight, whites who are eligible for public housing in the future will no longer have the option of finding low rent private housing, and will seek desirable public housing units.

Even if the court was right in assuming that in order fully to guarantee the equal protection of the laws to Negroes in the public housing program it was necessary to take special measures to avoid

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[57] The order requires that CHA continue to use its best efforts to increase the supply of public housing. *See* text accompanying note 20 *supra*. There is a question whether the court has the power to order such affirmative action. The court should be able to issue such an order for the purpose of correcting the effects of past discriminatory policies. However, once these effects have been corrected, the court may only regulate how CHA builds, not whether it builds at all. The community has no legal obligation to provide public housing.

[58] An undesirable effect of this requirement is that it increases the cost of public housing programs by requiring the purchase of more land.

[59] 296 F. Supp. at 915.

[60] *Id.*

geographical concentration of public housing built in the future, parts of the relief granted cannot be justified on this ground. Each individual requirement is, of course, likely to have a variety of different effects. Conceivably each requirement imposed on CHA by the court could contribute to preventing the geographical concentration of new public housing. But the requirement that the number of low income non-elderly public housing units be limited to fifteen per cent of the total number of dwelling units within a given census tract should be sufficient to achieve this result without the need for further requirements. In the light of this fact, it seems probable that the other two requirements, the 120 person per project limitation and the prohibition on providing dwelling units above the third story to families with children, were incorporated in the order for sociological and aesthetic, rather than equal protection, reasons. They were therefore inconsistent with the legal theory on which the case was decided.

CONCLUSION

The court in *Gautreaux* had its heart in the right place. However, in dismissing the counts of the complaint which did not allege intent it applied an overly restrictive interpretation of the equal protection doctrine. Although this restrictive application did not affect the plaintiffs in *Gautreaux*, it will be an unfavorable precedent for plaintiffs with similar grievances in future law suits. Furthermore, the generosity of the court in fashioning relief led it to take an excessively large step in the judicial administration of public housing programs. It based the granting of relief to cure inequality on a dubious factual assumption, and it granted further relief not essentially related to the inequality problem, but based on general sociological and aesthetic considerations.